

FEB 24 2009

**Board of Vocational Nursing  
and Psychiatric Technicians**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KIMBERLEY J. BAKER-GUILLEMET, State Bar No. 242920  
Deputy Attorney General  
4 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
5 Telephone: (213) 897-2533  
Facsimile: (213) 897-2804  
6  
Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2007-731

12 **JOCYLE CRESCE**  
109 Viking Drive  
13 Eaton, Ohio 45320

**A C C U S A T I O N**

14 Vocational Nurse License No. VN 206319

15 Respondent.

16  
17 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the  
20 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"),  
21 Department of Consumer Affairs.

22 **Vocational Nurse License**

23 2. On or about September 25, 2003, the Board issued Vocational Nurse  
24 License Number VN 206319 to Jocyle Cresce ("Respondent"). The vocational nurse license will  
25 expire on August 31, 2009, unless renewed.

26 ///

27 ///

## STATUTORY PROVISIONS

3. Section 2875 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

4. Code section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct . . .

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

6. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

7. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse  
2 practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

3 8. Health and Safety Code section 11377, subdivision (a), states:

4 Except as authorized by law and as otherwise provided in subdivision (b)  
5 or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of  
6 Division 2 of the Business and Professions Code, every person who possesses any  
7 controlled substance which is (1) classified in Schedule III, IV, or V, and which is  
8 not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except  
9 paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph  
(11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of  
subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of  
Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or  
veterinarian, licensed to practice in this state, shall be punished by imprisonment  
in a county jail for a period of not more than one year or in the state prison.

#### 10 COST RECOVERY

11 9. Code section 125.3 provides, in pertinent part, that the Board may request  
12 the administrative law judge to direct a licensee found to have committed a violation or  
13 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
14 and enforcement of the case.

#### 15 FIRST CAUSE FOR DISCIPLINE

##### 16 (Substantially Related Criminal Conviction)

17 10. Respondent is subject to discipline under Code section 2878, subdivision  
18 (f), in that on or about December 26, 2007, in the case entitled *The People of the State of*  
19 *California v. Jocyle Cresce* (Superior Court of California, County of San Bernardino, Case No.  
20 MSB707111), Respondent was convicted by the court on her plea of nolo contendere of  
21 violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor.

22 The circumstances of the crime are that on or about September 22, 2007,  
23 Respondent entered a Redlands Gottschalk's department store and selected a fragrance gift set  
24 and two shirts. She subsequently left the store without paying for any of the items. Once  
25 Respondent left the store, a Gottschalk's Loss Prevention Agent followed her, brought her back  
26 into the store and asked her to return the shoplifted items. Respondent then lifted her left pant  
27 leg. In the left sock, and taped to her left leg, was a blue shirt. The fragrance and accompanying  
28 fragrance gift bag were retrieved from Respondent's purse.

1           Upon arrival at the scene, a Redlands Police Department Officer interviewed  
2 Respondent. Respondent told the officer that she had gone into the department store for the  
3 purpose of stealing merchandise. She indicated that she thought she had a problem with  
4 kleptomania.

5                           **SECOND CAUSE FOR DISCIPLINE**

6                                   **(Dishonest Act)**

7           11.     Respondent is subject to disciplinary action under Code section 2878,  
8 subdivision (j), in that Respondent committed acts of dishonesty, fraud or deceit by taking  
9 personal property belonging to the Redlands Gottschalks department store without paying for  
10 those items. Complainant refers to, and by this reference incorporates the allegations set forth  
11 above in paragraph 10, inclusive, as though set forth fully.

12                           **THIRD CAUSE FOR DISCIPLINE**

13                                   **(Possession of a Controlled Substance in Violation of Law)**

14           12.     Respondent is subject to discipline under Code sections 2878.5,  
15 subdivision (a) and 4060 in that she illegally possessed a controlled substance. On or about  
16 January 2, 2008, Respondent was approached while in her vehicle by an officer of the Chino  
17 Police Department.

18           The circumstances of the crime are that upon a search of Respondent's vehicle,  
19 the officer located a cellophane package that contained a white crystal substance and a  
20 cylindrical pipe that had a bulb on one end. A field test of the white crystal substance indicated  
21 that the substance was positive for Methamphetamine. Respondent was charged with being in  
22 possession of Methamphetamine, a controlled substance, in violation of section 11377,  
23 subdivision (a) of the Health and Safety Code. On or about January 24, 2008, Respondent was  
24 referred to the PC 1000 Diversion Program and entry of judgment was deferred for a period of  
25 18 months.

26     ///

27     ///

28     ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

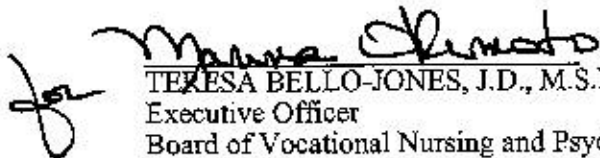
3 13. Respondent is subject to discipline under Code section 2878, subdivision  
4 (a), in that Respondent engaged in unprofessional conduct. Complainant refers to, and by this  
5 reference incorporates the allegations set forth above in paragraphs 10 and 12, inclusive, as  
6 though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
9 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric  
10 Technicians issue a decision:

- 11 1. Revoking or suspending Vocational Nurse License Number VN 206319,  
12 issued to Jocyle Cresce;
- 13 2. Ordering Jocyle Cresce to pay the Board of Vocational Nursing and  
14 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,  
15 pursuant to Code section 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.
- 17

18 DATED: February 24, 2009

19  
20   
21 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
22 Executive Officer  
23 Board of Vocational Nursing and Psychiatric Technicians  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant